



EXPOSITION
OF
MULLIVAN

1822.

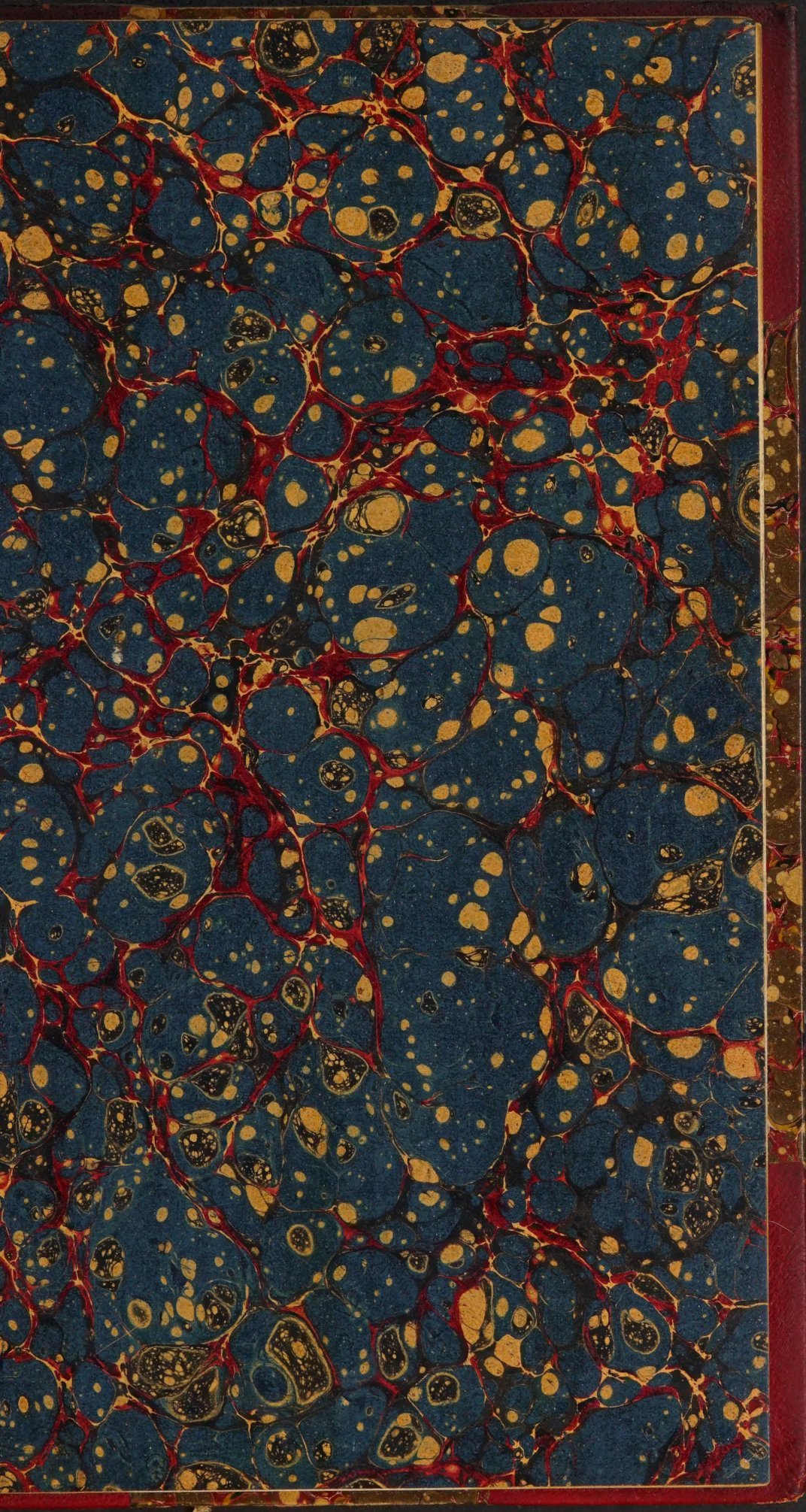




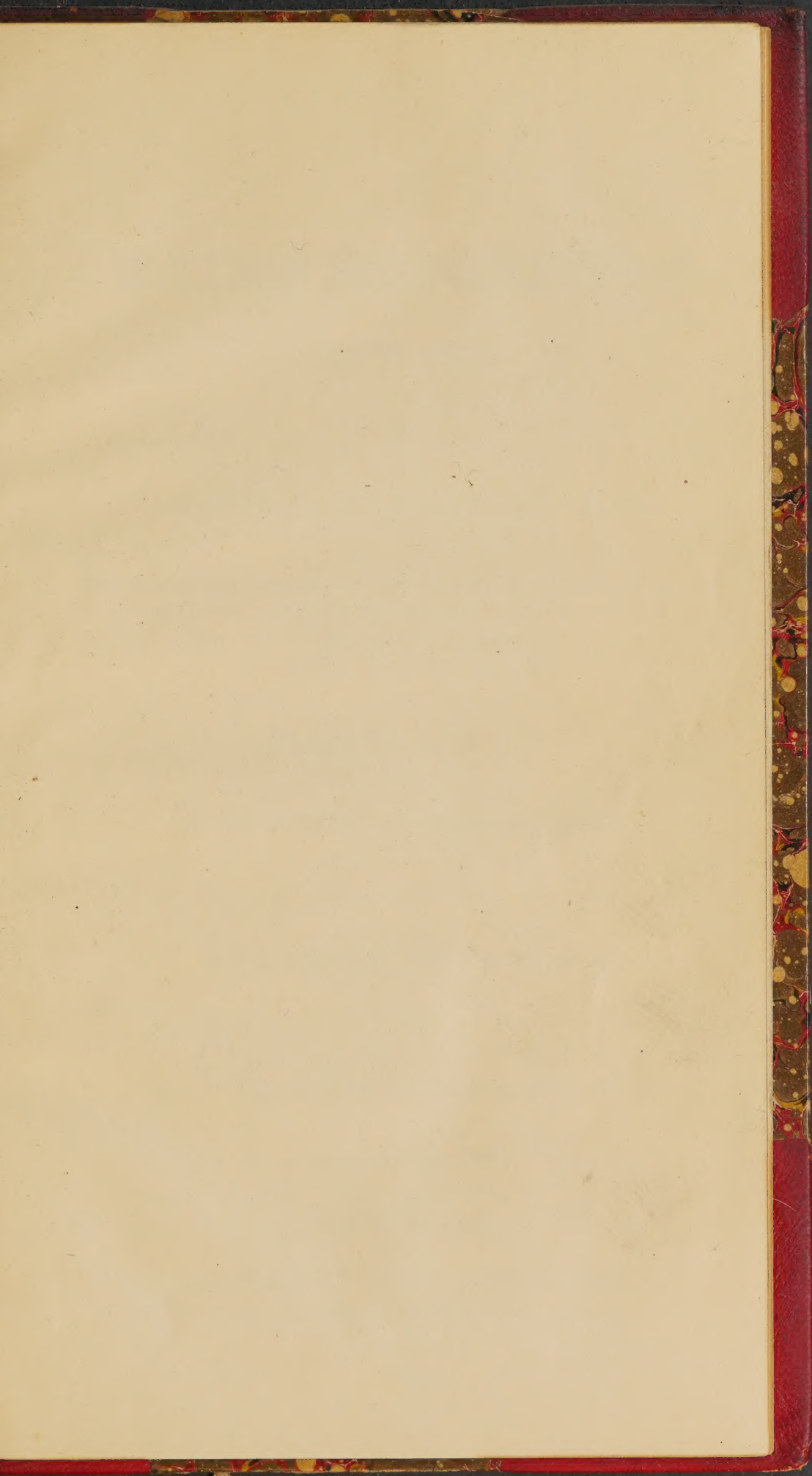


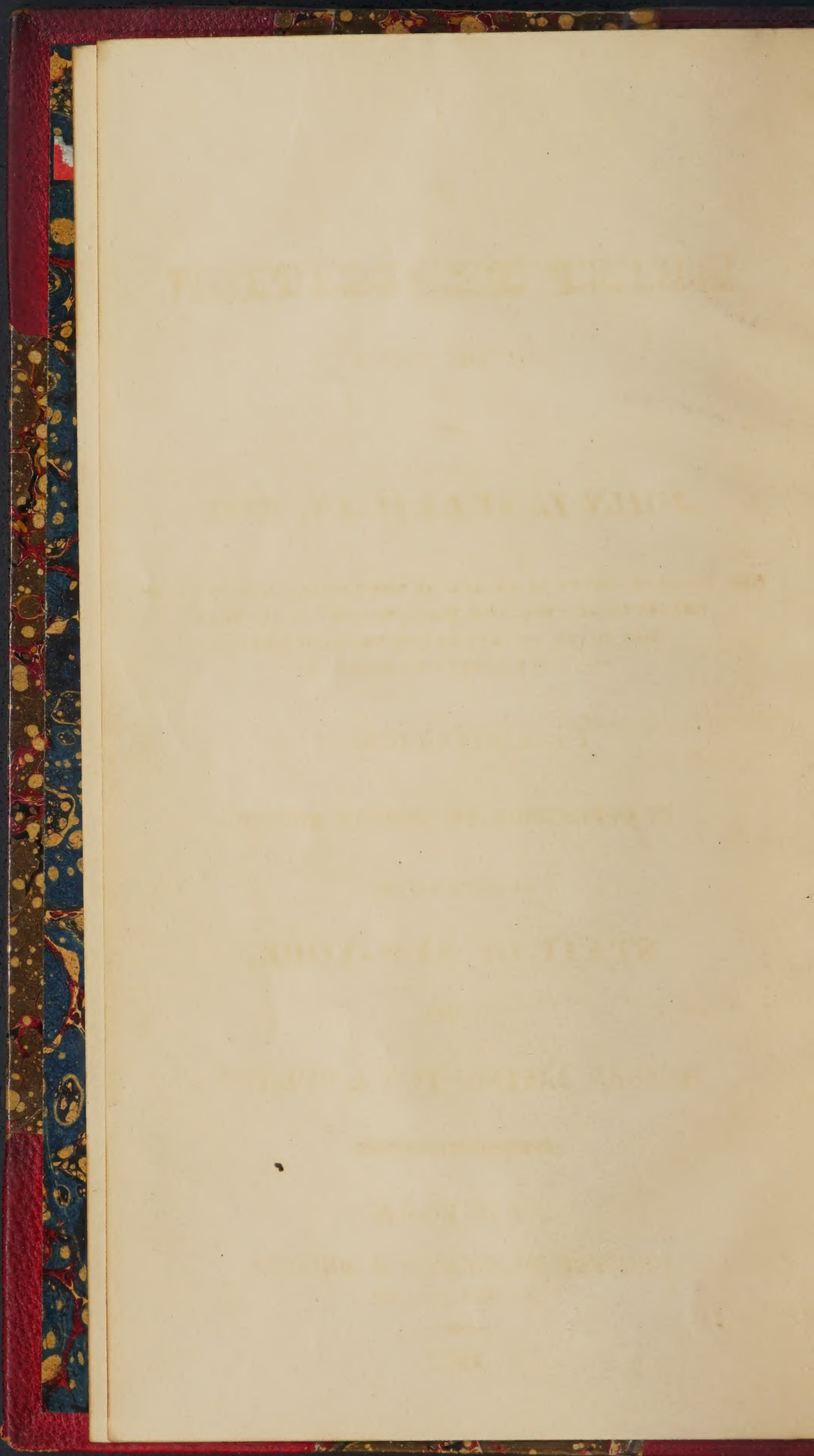
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A

BRIEF EXPOSITION

OF THE VIEWS

OF

JOHN L. SULLIVAN, ESQ.

WHO HOLDS IN VIRTUE OF AN ACT OF THE LEGISLATURE OF MASSACHUSETTS, AN EXCLUSIVE RIGHT TO THE USE OF STEAM TOW BOATS, ON PART OF THE WATER OF THAT STATE FOR FORTY-TWO YEARS, VIZ :

FROM 1814 TO 1856 !!!

IN OPPOSITION TO SIMILAR RIGHTS

GRANTED BY THE

STATE OF NEW-YORK,

TO

MESSRS. LIVINGSTON & FULTON.

NEW-YORK:

PRINTED BY WILLIAM A. MERCEIN,
No. 93 Gold-Street.

1822

86/85-

NEW-YORK, 10th Nov. 1822.

SIR—Pursuant to the intention I expressed in my letter to you of the 15th instant, I now address you through the medium of the press. You will find subjoined copies of the correspondence between you and me, and a copy of your letter to Mr. Lynch, with his answer. I do not find it necessary to add any thing at present, but the notes which you will find subjoined to my last letter.

I am, sir, with due respect,
your obedient humble servant,
CADWALLADER D. COLDEN.

JOHN L. SULLIVAN, Esqr.

Spring-Hill near New-York,
28th October, 1822.

SIR:—My absence from this state for some time passed, has prevented my sooner answering your letter of the 17th inst.

Formerly you proposed that the representatives of Livingston & Fulton should give you one hundred and fifty thousand dollars. (a) Not finding them disposed to part with so large a sum, you now ask what we will give. Permit me to inquire,—for what?

From your former communications we are to understand, that your answer to this question will be, to purchase your forbearance from attempts to destroy our exclusive right. But why is it of so much importance to pay you, in preference to all other men, to induce you to cease the efforts you have been unavailingly making for the last six or eight years? You will say, no doubt, because you have, in virtue of your own ingenuity, and the ingenuity of others, the benefit of which you have bought, concentrated in yourself the right of all the advantages of sixteen patents obtained since the establishment of Mr. Fulton's boats, for improve-

(a) In January, 1820, Mr. Sullivan was willing to receive one hundred thousand dollars, "or a sum near to this" (see his letter to Mr. Colden, dated 10th January, 1820, a copy of which is subjoined.) But in August, 1822, his opinion of his own claims had so far improved, that in his letter to Mr. Lynch of that date, he demands one hundred and fifty thousand dollars for a partial relinquishment of the rights he claims.

ments applicable to steam navigation. (b) I presume you will not hesitate to admit that not a single one of these sixteen patented inventions has ever been applied to any advantage by you, or by any other person ; and that there is not a single one

(b) In a memorial presented to the legislature of New-York, in 1819, Mr. Sullivan enumerates these sixteen patents as follows :

- 1 For the steam-tow-boat.
- 2 For an improvement thereon.
- 3 For the rotary engine of Mr. Morey.
- 4 For Sundry improvements in steam boats.
- 5 For Morey's water burner, or gas fire produced by a chemical union of tar and steam.
- 6 For the sea paddles.
- 7 For the wheel regulator.
- 8 For the interior boiler.
- 9 For the supply chamber.
- 10 For the double stern wheel.
- 11 For the side rudders.
- 12 For an improvement in gass fire apparatus.
- 13 For an improvement or additional discovery assigned by S. Morey.
- 14 For an improvement in the rotary engine, &c.
- 15 For an improvement in the pipe boiler.
- 16 For a combination of the cillindrical and pipe boiler.

From Mr. Sullivan's letter to Mr. Colden it would seem that he then contemplates relinquishing all his rights for one hundred thousand dollars, or some sum near to it. But in his letter to Mr. Lynch his demand is not only augmented to one hundred and fifty thousand dollars, but for that sum he proposes "relinquishing *passage boats*" only, and even with respect to this relinquishment he means to make an exception as to steam coasters from Hartford to New-Haven. The right to carry freight by steam boats upon the North River, as well as elsewhere, Mr. Sullivan means to reserve for his own benefit, when he should receive the hundred and fifty thousand dollars. See his letter to Mr. Lynch.

of them that is or can be practically used, notwithstanding all the waters of the United States, except the waters of the state of New-York, are open to them. You obtained a patent for having discovered, after you saw Fulton's boats in operation, that a steam boat would tow another boat!!! What would you have thought if a person who had seen the ascension of the first balloon, had anticipated the inventor and taken a patent for attaching a car to it? In virtue of your towing patent you claim an exclusive right throughout the United States, to tow vessels by steam. It is however right that I should admit, that though this pretended right of yours is violated daily in every harbour and on every river of the United States, yet you have never attempted to interfere with those who set your patent at defiance.

About the year 1819 you constructed a steam boat on Connecticut River. We may presume she had all the advantages of your sixteen patented improvements, yet she was perfectly innavigable. She was a dead loss to all who your representations had induced to take a concern in her. After some attempts to run between Hartford and Saybrook this patented towing vessel was found incapable of moving even herself against the slight current of the Connecticut River, she was towed to New-York, where she was sold, with all your patented improvements, for no more than the value of her hull. She was purchased by captain Bunker. Every part of your new invented engine was sold for old iron. Such machinery as is in use in boats of Fulton and Livingston was put in her, and she now, with a success equal to that of any other.

boat, navigates the waters of this state under the name of the *Enterprise*. Considering that when you made this fallacious attempt to apply your sixteen improvements you had for twelve years seen Fulton's boats in operation, that you was fifteen months constructing your boat, which was of no more than one hundred tons burthen, I think it may be concluded that it would have been a long time before mankind would have had the benefit of Steam navigation, if its introduction had depended upon your mechanical genius, unassisted by the demonstrations of Fulton. Your abortive experiments would have been referred to in addition to all attempts made previously to Messrs. Livingston & Fulton's to prove that it was impossible to apply steam usefully to navigation. But supposing the merits of your inventions to have been equal to your representations. I have never been able to understand how we were to secure the quiet enjoyment of our right by giving you a hundred and fifty thousand dollars, or any other sum. I acknowledge that you are a very pertinacious opponent, but I think the price you have proposed, or any thing like it, is rather too large to be given upon the supposition that no other adversary could appear equal in perseverance and of equal ability.

You seem to think that if we were to purchase your sixteen patented improvements, we should have nothing further to fear; and that though the exclusive right to Livingston & Fulton is an odious monopoly in the hands of their representatives, yet it is apparently your opinion, that nothing can, or ought to be said against it, if you partake of its advantages.

But sir, besides the sixteen patents under which you claim, there have been not less than sixty or eighty others taken out, since Mr. Fulton's was granted in 1809 for alledged improvements which may be applied to steam navigation. I do not know that any of these patented improvements are in use, (except perhaps something as new and important as the patented crank and parallel link, both of which have been in use from the very first application of steam to move machinery.) One of the last steam vessels of any size, built in this state, is the steam ship Robert Fulton, the machinery of which was constructed by Mr. Allair. From what we knew of our own boats, and what we learn of the performance of boats in operation in Europe, we are warranted to believe that she is equal to any steam vessel in the world. She is built precisely on Mr. Fulton's plan, and has no improvement which has been patented by any other person. But suppose any one of the numerous patentees I have mentioned should have the same high opinion of his inventions that you entertain of yours, why may we not expect, when he finds we have been so ready to quiet you, that he will hold the same language to us that you have done? And if we refuse to give him a hundred and fifty thousand dollars, why may not he threaten us with his influence with the legislature, with combinations against us, and with the force of his talents?

I have not thought proper previously to writing you this answer, to communicate your letter to a single individual of those with whom I am interested in steam boats. You must therefore consider

me as speaking for myself only ; and as your communication to me invites the utmost candour, I beg leave in answer to the questions you have so plainly put to us in these words, "what sum you will give?"——(c) in the same unequivocal language to say, so far as I am concerned, not one cent. I candidly confess to you that from what I have seen and heard of your patents and improvements, I do not think them worth any thing.

Accompanying the letter which I am now answering, I have received a printed pamphlet signed by you, which though it purposes to be an advertisement and an invitation to others to unite under your auspices, in opposition to our rights, yet it is no doubt a precursor to those new attempts on the legislature of this state, for which, in your letter to Mr. Lynch, you gave us notice, (unless we acceded to your demand of a hundred and fifty thousand dollars,) you intended to prepare by domiciliary visits to the members.

I must ask on what ground you assert, in that pamphlet, that the question, whether the original grant to Mr. Livingston was constitutional, will not probably reach the supreme court of the United States? You yourself have proved that the grantees of Livingston and Fulton can, in a few months be compelled to submit their claims to the decision of that tribunal. It cannot be unknown to you, that a case which presents this question is now waiting for adjudication and there is not the least doubt but that it will be decided at the term

(c) See Mr Sullivan's letter to Mr. Colden, 17th October, 1823. A copy of which is subjoined.

which commences next February. If it be not, and I beg you to notice this declaration, it will not be the fault of those who claim under the laws of the state of New-York. However disposed some, who are hostile to those laws may be, to an immediate ultimate decision as to their validity, with a hope that while the question is depending they may obtain legislative interposition, I do not believe it will be in their power to procrastinate the judgment of the Supreme Court.(d)

(d) In August 1819, Mr. Sullivan and others filed their bill against the Fulton steam boat company. In September 1820, the court below gave judgment in favour of the demurer, and in March 1821, that is, in twenty months after filing the bill, the cause was brought to a hearing before the Supreme Court of the United States. The bill was then dismissed, because it did not appear that the courts of the United States had jurisdiction of the matter; Mr. Sullivan not having alleged in his bill that the complainants and defendants were citizens of different States. Judge Story said from the bench, on that occasion, that the Supreme Court would not take cognizance of a case of which it did not appear by the pleadings, that the court had jurisdiction, even with the consent of the parties.

In the case of *Ogden V. Gibbon*, a final decree of the court of Errours of the state of New-York was obtained in February last. The case was immediately carried by appeal, to the Supreme Court of the United States and is the case above referred to, which is waiting for the adjudication of that court, and will be decided at the ensuing March term.

It appears from these instances that there is no difficulty in compelling a party to submit any question proper for its jurisdiction to the final decision of the Supreme Court of the United States, and that it may be done in as little time as is generally required to prosecute to the last resort, any common suit in our own courts. Had Mr. Sullivan's bill shown that the United States Court had jurisdiction of his case. The constitutionality of

You have made a great mistake in the printed paper to which I have above referred, in stating that the highest court of this state has decided that a patented invention may be used in the waters of this state, notwithstanding the grant of Livingston and Fulton. That point was not submitted for adjudication in the case of Livingston & Van Ingen. The expressions used by some of the Judges by way of argument and illustration, do not bear the interpretation you have given to them. But if they did, I submit whether it would not have been more candid, if you had stated that Chief Justice Kent, who on giving his opinion used expressions similar to those you have quoted from the argument of Judge Yates, required the reporter to subjoin a note to the case, stating that by the words he had used he did not mean to decide that a patentee could interfere with the exclusive rights granted by the state of New-York. And though you have omitted all notice of this explanation of the late chief Justice, it appears in the very volume to which you have referred for your quotation.(e)

In the case of Livingston against Van Ingen, the defendants had no patent. They did not, and

the exclusive grants of the state of New-York would have been, long ago, finally decided.

(e) The note referred to is in the following words.

“The Chief Justice requested it to be added, that the idea here intimated, hypothetically, was not necessary to the argument, and on more reflection he thought that even that intimation might lead to error. He wished not to be understood as saying that a state grant could, in any case, or before any tribunal, be questioned or controlled by a patent right.”—9. John. Rep. 582.

could not have set up any justification on that ground, and therefore whatever was said either by the counsel, or any member of the Court of Errors, in that case, as to the patent laws was merely as argument and illustration, which judges never fail to caution us is not to be received as authority.

But I repeat that even the argument of judge Yates, which you have quoted does not warrant your conclusion ; much less does it warrant you to say that the highest court in the state of New-York has made any decision whatever in relation to the interference of a patent with the laws of the state. No doubt, as Judge Yates says, a state law cannot interfere with the rights of a patentee, but the question still remaind what are his rights ? Though I acknowledge all the respect due to your law arguments, and to the legal opinions with which you so confidently favour us, yet I trust I shall be excused for placing most reliance on the repeated, deliberate and disinterested decision of the members of our judiciary and legislatures, that the laws of New-York in question are constitutional. At least I am persuaded you will think, on further reflection, that I am not reprehensible for not giving my assent to yield to your demand of one hundred and fifty thousand dollars, upon the ground that you are right, as to this great constitutional point, and that all our judges, our chancellor, and all the members of our Court of Errors have been so repeatedly wrong.

I cannot but notice for a moment, your reference to the law of Congress, of 1819, (*f*) which, as an

(*f*) The law of Congress here referred to is as follows :

evidence of the extent of your influence, you told us, in your letter to Mr. Lynch, demanding a hundred and fifty thousand dollars, was passed by your procurement. First, sir, let me remark that Congress cannot give to the Courts of the United States, a cognizance beyond that which is warranted by the constitution; and I will add, if your construction of the law of 1819, should be established, there is a total prostration of state sovereignty. The framers of the constitution were sedulous to guard the state tribunals against the interference of the courts of the United States, except in the last resort, that is by appeal after the decision of the highest state tribunal. But according to your exposition of the law of 1819, the lowest

“An act to extend the Jurisdiction of the Circuit Courts of the United States to cases arising under the law relating to Patents.

127. SEC. 1. The circuit courts of the United States shall have original cognizance, as well in equity as at law, of all actions, suits, controversies, and cases, arising under any law of the United States, granting or confirming to authors or inventors the exclusive right to their respective writings, inventions, and discoveries; and upon any bill in equity, filed by any party aggrieved in any such cases, shall have authority to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any authors or inventors, secured to them by any laws of the United States, on such terms and conditions as the said courts may deem fit and reasonable: *Provided, however,* That from all judgments and decrees of any circuit courts, rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner, and under the same circumstances, as is now provided by law on other judgments and decrees of such circuit courts.

court of the United States may exercise a controuling power in the first instance, over the highest state court. According to your opinion, a district court of the United States, which has circuit powers, may restrain the Chancellor of the state from granting an injunction.

I perceive that in your printed production, which I must consider as part of your letter to me, you say you are advised by counsel that it is only necessary to file a bill, setting forth the existence of the right, and the danger of its interruption, to obtain an injunction to prevent the party holding the monopoly from interfering.

This ambiguous phraseology, as we are to understand from the subsequent part of your "brief exposition," means that you have only to file a bill in the district court of the northern district of the state of New-York, setting forth that you claim some right under one of your sixteen patents, that you fear an interruption. if you attempt to navigate the waters of the state in violation of its laws, that the district court will grant an injunction, and that then no one by authority of the Chancellor, of the state, or otherwise, will dare to interfere. So it appears that according to the advice you think you have had, if you file a bill in the district court, stating that you have obtained a patent for an axe of your invention, that you intend, at one time or other, to make such an axe for the purpose of cutting in my woods, but that you fear the Chancellor will grant an injunction if you attempt to use it for that purpose, that the District court can and will prevent the Chancellor from interfer-

ing. This may well be called ultra-federalism. I do not think an argument with you on this point, on this occasion, would be in its proper place. I will only observe that it is obvious the law of 1819 does no more than grant to the courts of the United States power to interpose by injunction where one person is using the patented invention of another. Another remark I do not hesitate to make, which is that no person by profession a lawyer, and having the degree of counsellor at law in our courts, unless it be some one in his dotage, could ever have given you such advice as you have mentioned. It is impossible that any sound constitutional lawyer could have given an opinion that congress intended so to prostrate, or that they had the power so to prostrate the judiciary of the state. Had it been understood by the members of the Convention that a controul to this extent over the state courts was intended to be conferred by the federal constitution, you may be assured that more members than the late Chief Justice Yates and Chancellor Lansing, who was so zealous an advocate of the prerogatives of the States, would have left the Convention, rather than have sanctioned by their presence such an entire subjugation of the States.

I beg you to observe that I would by no means be guilty of so great an indecorum as to suppose that you have intentionally misrepresented. I only mean to express my confident belief that if you have consulted any lawyer, whose opinion on this constitutional point is worth having, you, not being yourself a lawyer, have misunderstood him.

You seem of late to have harboured great abhorrence to the exclusive grants of the state of New-

York. I must remind you that they did not always appear to you so odious. In the year 1815 you prevailed on the legislature of the state of Massachusetts to pass a law, granting you an exclusive right to navigate by steam, for *forty-two years*, (g) a portion of her waters, which law is substantially in the words of the original grant to Mr. Livingston, and in your petition to the Massachusetts legislature, you hold up the grants of the state of New-York as worthy examples, and you insist upon the constitutionality, propriety and justice of such state grants.(h) At the very time that you hold this exclusive right, and no doubt would exercise it, if you found it to your advantage, you are indefatigable in your endeavours to destroy the rights of those who claim under similar grants from this state.

I should, sir, as I shall probably publish this letter, have answered yours of the 17th instant, and your brief exposition more at large. But in consequence of the fever in New-York, I cannot have access to any book or document on this subject,

(g) The act, a copy of which will be found in the appendix, grants to Mr. Sullivan the exclusive right to Connecticut River, for the use of his patent steam tow boats "for the space of twenty-eights years, being double the time allowed by the patent laws of the United States, *from and after the expiration of his said patents*, bearing date the 2d April, in the year 1814."

His patent was of course for fourteen years; to which add the twenty eight years granted by the legislature, his exclusive right extends to forty-two years.

It will be seen by Mr. Sullivan's Patent, that he asked an exclusive grant for FIFTY years.

(h) A copy of the memorial of Mr. Sullivan and of the act of the legislature of Massachusetts above referred to, will be

not even to our former correspondence, which I may also publish. Before the meeting of the legislature I shall probably have the honor to address you again, and shall therefore only now add assurances of the due respect with which

I am your obedient

humble servant,

CADWALLADER D. COLDEN.

JOHN L. SULLIVAN, Esq.

found in the appendix, The following extracts from the memorial are here presented.

“ To obviate every objection that your petitioner can think it possible to raise, he begs leave to state that he does not propose to the legislature to stop any channel of business or industry now open and in use ; but proposes to leave the river free as nature and art have made it to all who do or may hereafter ply upon in the common way.”***

“ The practice of other states in giving exclusive rights on rivers for a limited time, to encourage useful enterprise and improvements, and that of our own state in numerous grants of bridges and canals would show, *if any doubt of it could exist,* THE CONSTITUTIONALITY of *this kind* of appropriation of the waters of the commonwealth.”

APPENDIX No. I.

A copy of Mr. Sullivan's petition to the Massachusetts Legislature, and of the act of that state in his favour.

To the honourable the Senate and House of Representatives of the Commonwealth of Massachusetts, in General Court assembled.

The petition of John L. Sullivan, humbly sheweth.

That after many experiments and much expense, your petitioner succeeded in adapting steam engines of a peculiar construction, to boats of the small burden used on our canals and rivers, so as to enable a steam boat of this size to contain a power of twenty or thirty horses, and to tow a number of luggage boats, and to overcome rapids by the same power applied to a windlass connected with the engine.

Your petitioner now owns such a boat, and put the same in operation on Merrimack river the last year.

That this new and useful application of steam engine power, being of the nature of those inventions or discoveries which the patent laws of the United States are intended to encourage and protect, your petitioner has obtained a patent for his steam tow-boat, and is desirous of putting it in operation on Connecticut river, by which the western parts of this commonwealth may enjoy the advantages of greater facility in transporting the produce of the country to market in less time, and therefore at less expense ; and especially in the saving that may be made in bringing up that river the various commodities that commerce furnishes to the agriculturalist, the manufacturer and all classes of men.

Your petitioner therefore begs leave to ask the attention of the legislature in the principal obstacle to this useful design, and to the difference between his patent and those of a more common kind, the latter, usually granted for some mechanical purpose, are within reach of individuals, and require no very great expense or capital ; and by being soon spread through the community, remunerate the inventor within the patent term of fourteen years : While on the contrary, a patent competent to embrace business of the magnitude contemplated under that of your petitioner, demands a great capital which cannot be commanded for a purpose that may not be carried into complete effect before the term will expire. No prudent man will therefore engage in it, because the first expense may not so soon be remunerated. The public is therefore deprived of its advantages, and will be so for ever, without similar encouragement to that now prayed for.

Your petitioner, therefore, with a view to the formation of a company with an ample capital, and sufficiently numerous ; comprehending people living near the river, as well as in other parts of the state, who may be disposed to promote improvements of this kind in the country, prays that the exclusive use of Connecticut river for steam tow-boats, so far as the same passes through this commonwealth, may be granted to him and his associates, and their successors and assigns, for the term of *fifty years* ; provided, that within five years from the passing of the bill, at least one steam tow-boat shall have been put in operation thereon.

Your petitioner begs leave to observe, that the allowance of five years is prayed for, because considerable time will be required to prepare the machinery, boats, and store houses, and to form the boating company ; and more especially, because there are falls in the river a few miles above Hartford, which your petitioner has applied to the legislature of Connecticut for leave to lock, and which it may require two or three seasons to effect.

To obviate every objection that your petitioner can conceive it possible to raise, *he begs leave to state, that he does not propose to the legislature to stop any channel of business or industry now open and in use ; but proposes to leave the river free as nature and art have made it, to all who do or may hereafter ply upon it in the common way.* On the contrary he asks only the necessary protection for those who may join him in establishing steam tow-boats to aid the business of that section of the country, and give even to those who navigate in the old way the advantage of the improvements on the river, that may be found necessary, so that the number of men employed will increase, and the great river in effect, will be converted into a canal, and the navigation thereon attain that regularity and despatch necessary to gain the confidence of the trader and the farmer, and by the greater facility of transportation augment the profits on the produce of the country.

Nor is this undertaking uninteresting to the metropolis of the state ; for your petitioner looks forward with confidence to the formation of a canal, some time ago projected between Weymouth and Taunton. By that route and Connecticut river, merchandize will be carried to and from the western parts of this commonwealth ; and though circuitous it will be less expensive than land carriage, and open a new market for the bulky produce of those countries : while at the same time the very probable connexion of Merrimack river with Connecticut river, across the country between Concord in New-Hampshire and Windsor in Vermont, by means of Sunapee lake. on the highest of the intermediate lands forming the source of Sugar river. running to the west. and the Contoocook running to the

east, will lead the trade of Vermont to this commonwealth, and in time of war afford a secure communication from Boston to Connecticut, by water. Compared with some works of this kind in Europe, however extensive this plan may seem to be, it will appear on examination, limited and practicable; especially when it is recollected, that in England alone, the extent of their canals exceeds three thousand miles: and it is well known that they have proved one of the principal sources of the prosperity of the United Kingdom.

The practice of other states in giving exclusive rights on rivers for a limited time, to encourage useful enterprize and improvements, and that of our own state in numerous grants of bridges and canals, would shew, if any doubt of it could exist, the constitutionality of this kind of appropriation of the waters of the commonwealth.

Your petitioner, therefore, prays that the encouragement and protection above mentioned, necessary to carry his improvements in inland navigation into extensive operation and usefulness, may be granted.

And your petitioner, as in duty bound, will ever pray.

JOHN L. SULLIVAN.

Boston, May 30, 1814.

A true copy, attest,

A. BRADFORD, *Secretary of Commonwealth.*

APPENDIX No II.

Letter from Mr. Sullivan to Mr. Colden, to which the foregoing letter from Mr. Colden is an answer.

Troy, 17th October, 1822.

HON. CADWALLADER D. COLDEN,

SIR:—Your professional experience and character warrants me to believe that you cannot conclusively entertain opinions different from the Court of Errors, in Van Ingen's case. Nor would it be reasonable, that as a patentee, I should not go on to occupy the rights which I derive from the laws of my country. There is capital enough at command to build steam boats for the passage now exclusively possessed by those you are supposed to be principally interested in, so soon as the truth is realized that there is no real obstacle in practise. It is a natural inquiry, however, at the moment I am seeking arrangements to assert those rights, whether it may not be mutually better for me to sell, and your company to purchase? Though convinced of the beneficial result of perseverance, yet it might be even better to take less than an equivalent, for relinquishing the ground your company occupies, as I am not without some

other pursuits. And I beg you as a gentleman to be assured that the inquiry, what sum you will give ? is not to be considered as an empty threat, but as a matter of business, founded on principles that do not remain to be settled ; for otherwise I must ere long have raised a barrier to compromise.

I am, respectfully,
yours, &c.

JNO. L. SULLIVAN.

APPENDIX No. III.

Charleston, January 10, 1820.

CADWALLADER D. COLDEN, Esq.

SIR :—Without the honour of a personal acquaintance, I address this to you, in the hope it may produce some mutually favourable results. Expecting to pass through New-York shortly, in my way home ; any reply you may think proper to give, or to procure, will meet me if sent to No. 18 Greenwich street.

I have felt it to be my duty to pursue my rights in New-York, relative to steam navigation, and still do so, and hope the legislature may not be unfavourable to the plea I may again prefer ; but I should rather find a shorter course.

The arrangements I am making in South Carolina, for an active exertion of my enterprise may make the Hudson either less or more an object than ever, as it may be connected or not with my plan to navigate here in winter, and there in summer. But it would be preferable to sell outright, my patents and claims to navigate the Hudson ; and it would be more consistent with the feelings and sentiments I entertain towards the gentlemen who compose the Hudson companies, to make the offer to them, than to one of an opposite interest, and who would be very much strengthened by possessing patents of acknowledged utility and importance. While on the other hand the possession of them by the existing companies would perhaps, so far strengthen their ground, as to put an end to all controversy. Of this, however, yourself and the other gentlemen concerned, are the best judges.

I estimate the use I may hereafter make of these privileges, at more than one hundred thousand dollars. Whoever, therefore, will pay, or after a partial payment, will secure to me a sum near to this, if determined on when I am in New-York, may make the purchase. In case of not selling, I shall petition and pursue the object with all the help I can get from interested parties, of course.

You are, sir, so entirely master of the whole subject, that I need use no arguments to show where the interest of the own-

ers of the present grant lies, or to suggest the important use to which they could be applied for freighting as well as passengers on the Hudson, the canals and other waters of the state.

I shall be so little time in New-York, that a prompt decision will be desirable ; especially as I cannot be long there without seeing Mr. Gibbons, who has requested an interview, and to whom I have proposed to make me an offer.

I hope you will not misconceive the motive that leads me to put the subject in this train. I have no doubts of a result in my favour, but this settlement will, I conceive, be better for all parties.

I am, very respectfully,
your most obedient servt.

JNO. L. SULLIVAN.

APPENDIX No. IV.

SIR :—I have had the honour to receive your letter of the 10th instant. My interest in the Hudson River steam boats is comparatively very inconsiderable. The principal owners are the children of Mr. Fulton, represented by his executors, and the Messrs. Livingstons, sons-in-law of the late Chancellor. I have never taken any part whatever in the management of the concerns of this establishment ; but were it otherwise, I confess I should be at a loss to know on what ground to advise any steam boat company to give you one hundred thousand dollars. It is known that you claim to be the proprietor of sixteen patents for improvements on steam navigation, yet with the advantage of all these improvements, you have not, after years of trial, been able to construct a steam boat equal to those built on Fulton's plan : notwithstanding you are claiming for yourself great merit, as an inventor, while you deny that Fulton had any.

We have reason to know that, if you can, you will, destroy the rights of those who claim under the steam boat laws of the state of New-York. For my own part, I mean to rely on the justice of my fellow citizens, and the operation of those laws for the protection of the property I have honestly acquired under them, and I will never be driven to give one cent to purchase any forbearance in respect to it. You will find, therefore, that I am not the person to whom your overture, to receive one hundred thousand dollars, should be addressed. I am well disposed, however, to sell my interest in the North River boats, which cost me fifteen thousand dollars. You shall have it for that sum, and legal interest, deducting from the amount of principal and interest all the dividends I have ever received. I

make this offer, not from any dread of the combination with which you threaten us, but to convince you that representations which you have heretofore made, as to the value of the New-York steam boat stock, have been altogether incorrect.

Your hopes, that I will not misconceive your motives, you may be assured are realized. It is utterly impossible that they can be mistaken.

I am, sir, with due respect,
your most obedient servant,
CADWALLADER D. COLDEN,

JNO. L. SULLIVAN, Esq.
New-York, July 20, 1820.

APPENDIX No. V.

Albany, 27th August, 1822.

D. LYNCH, Esq. as agent of the North River Steam Boat Company.

SIR :—I am informed by judge Spencer, that he forwarded to you a line I addressed to him. I therefore, for reasons that will appear, think proper to be more explicit, in regard to terms with the North River Company.

It is best on this occasion to admit frankly what is true in law and equity. We all understand the subject, and our respective rights and interests.

I present first, my view of the *disadvantages*, and then of the *advantages* of my proposition to you, herein subsequently made.

First. Your three steam boats are doubtless inadequate to the public accommodation, and two of them unsuitable : because the landing below Albany, or keeping passengers on deck during the night are serious inconveniences. But the company can hardly think it prudent to construct more boats, under the uncertain tenure, or legal instability of your state grant.*

The law of patents must prevail ; such was the avowed opinion of all the great law characters of this state.

The law of Congress, of 1819, which was passed in consequence of my petition, gives full protection to patentees, and required to be only in *one instance* executed, to render the state privilege *null and void as to patented engines*. The opening made by Lansing and Thayer's case, shows that the process to be equally clear and summary. There besides exists a right of action for damages, as an exclusion is an aggravated infringement, in as much as it prevents the owner himself, of this property, from its use in a thousand instances.

* Notwithstanding any considerations of this nature, the company have contracted for a new boat of upwards of three hundred tons, to be completed by the next season, and in the mean time have put the Fulton in the North

This law being now understood, will produce steam boats in competition with yours, the ensuing year, for which capital actually stands ready.

In consequence, or under *this law*, too, the Connecticut company will be enabled to run a new boat, (contemplated) directly from New-Haven to New-York, while their other boat, the United States, will perform the rout to New-London, which will take the business from Providence, as the open sea will not be thought safe for the old boats after August.^(h)

Rhode-Island, connected probably with Boston) will be easily awakened to assert the same right, as they can have patent steam boats perfectly adapted to the sea voyage, which I say from experience, a number of the wealthiest men there being concerned with me in the steam boat patent, with which I navigated to Charleston last November.

Now, it is in the power of your company to have advantages the reverse of this, even if the increasing unpopularity of the monopoly should produce a repeal of the remedial laws, or pos-

(h) Mr. Sullivan notwithstanding all the experience from which he finds himself warranted to speak with so much confidence as to steam boats, is sometimes greatly mistaken. This is one instance of the incorrectness of his opinions on this subject. For the sound boats, which he thought would not be safe after August, are now, towards the middle of November, running with as many passengers as usual; and will continue to run as long as their employment will defray the expense.

One other instance of Mr. Sullivan's mistakes as to machinery for steam navigation, is shown in his correspondence with a Mr. Busby, respecting a water wheel of his invention; of which Mr. Sullivan, (after having received a drawing and description from Mr. Busby) speaks of as "*as an admirable invention.*" These letters were shown to one of the steam ferry companies in this city, to induce them to try Mr. Busby's wheel, which they did at the expense of several thousand dollars. But this "*admirable invention,*" instead of being a propeller, might with some propriety have been called an impeder, for it was found that the boat could hardly move with it; and the company, at a great additional expense, was obliged to take out Mr. Busby's admirable wheel, and restore the original Fulton wheel.

It may be remarked that this Fulton wheel, or the wheel which Mr. Fulton first applied to his boats, is the wheel with which the Rhode Island boats, the steam ship Robert Fulton, the steam brig New York, and all the steam vessels which have for some time past navigated the open sea as well in Europe as in this country, are propelled. By this correspondence between Mr. Sullivan and Mr. Busby, it appears that Mr. Sullivan was desirous of adding Mr. Busby's patent right to the sixteen which Mr. Sullivan previously possessed; but Mr. Busby having refused to accede to Mr. Sullivan's propositions to purchase the patent right Mr. Sullivan proposes that Mr. Busby should conditionally assign his wheel to Mr. Sullivan for steam tow boats for the state of New-York, and Mr. Sullivan adds "I will then get a model made for exhibition at Albany where I am preparing for show some working models connected with the subject and will apply a small engine to your model."

So that if Mr. Busby's wheel does not figure in the next exhibition of play things which may be made to the legislature at Albany, it may be owing to this negotiation of Mr. Sullivan with Mr. Busby having failed.

sibly the whole grant, as the right of making it was not in the state, at the time it was made. At the last session, the bill reported by the committee, would have been passed had the applicants been contented with that alone.

The exclusion from New-Haven may be overcome by assuming the flag of the United States, the use of the simplest of my patents, the gas fire, auxiliary flame, which cannot of right be prevented. A bill may be filed there in the circuit court to enjoin against interference, as well as in the state of New-York.

You will get clear of opposition from Rhode-Island; and above all, possess the exclusive right of steam tow passage boats between Albany and New-York. Your company would be safe from all competition by outdoing in accommodation all single boats even if the suit pending on the broad ground of the constitutionality of the grant, should prevail against you. The Chancellor might be lightened so as to come at all times to Albany by placing her engine in another hull. The Fire-Fly might have an elegant yacht for additional accommodations in tow, and be equal to the Richmond.

There is still another consideration which ought to have some weight. It is that by thus manifesting a readiness to procure to the public, under your grant, all the accommodation which the progress of this art in navigation develops. You might not only save the popularity of the institution, but instead of an act against you, perhaps procure the advantage of an extension of the patent to a second full term, or at least for the half of it, on the good plea, that the act of the state had deprived the proprietors of full seven years of his right; and it might with some propriety and effect be said, that from public spirit you had not obstructed the admission into the state of improvements demanded by the internal commerce of the state.

My pretensions you know are founded not only on the general right, but specially on three principal patents.

1st. The patent for the application of steam power to the towing of a separate boat from the machinery and fire; and which I assert with peculiar good grounds, as a right gained of Mr. Fulton, after a solemn hearing before a board of arbitrators, under a law of the United States; in which controversy he and his associates acknowledged its validity.

The obvious and great utility of this invention, and its simplicity, leads some to under value it, or pretend to do so. But this is no objection in law, and I have not read or seen any thing that shakes my confidence in its validity. It will certainly be carried into effect, if you should not yourselves do it, on the terms I shall mention, and of the preference that will be universally given, I entertain not the least doubt; and my claim for its extension, would have in it a peculiar propriety.

2d. I claim to use the patented engine of Morey, and my own patented improvement thereon, the double or revolutionary engine. The same with which I navigated a steam boat from Boston ; and on the Santee during the last winter.

3d. I claim to use also Ward's engine patented to him, and acquired by purchase. You may see some account of it in Sullivan's journal of last October. It is an improvement of some importance : his objection to Morey's is obviated.

These inventions, unlike a certain recent attempt of unskillful native ingenuity, are the result of many years of assiduous attention by men of science and practical knowledge, and have been put in successful operation. They are capable of essentially reducing the price of passage, from their economy. I assure you nothing has prevented my closing a very advantageous arrangement, comprehending passage boats to touch at Albany, but the knowledge that it would be greatly for the interest of your company to meet promptly my demand, which however considerable in itself, it is by no means in proportion to the saving your company would make ; the advantages it would gain, or the damage I have sustained from so long an exclusion.

I therefore think it friendly to inform you that I have suspended my negotiation expressly to learn the temper and determination of the North River Company for one month, which I shall occupy in extending my acquaintance in the western countries. And if on my return I should not have the honour of a decisive answer, at Utica, nor at Troy, I must conclude that your company does not think it expedient, and I shall close with my friends the bargain already matured, including passage boats.

Although much less than I shall probably make in a few years, the sum, after mature reflection, that I have fixed upon is one hundred and fifty thousand dollars, for relinquishing passage boats entirely to your company, with the right of using those patents, excepting only the run from Hartford to New-York, for steam coasters, which exception may be the means of getting the retaliatory act repealed. One fifth of which sum I should expect in cash immediately, and the rest in four annual payments : and as the time is short in which this arrangement must be made if at all, I beg leave to mention the form of settlement requisite, viz : Notes of the proprietors of the company interchangeably endorsed.

I beg that your answer may be decisive, as the business in hand equally requires decision on my part.

Should the view I have taken be different from your own, on mature consideration, or the measures I take be as decisive as

my interest prescribes, you will please to look on them as being in no wise in a spirit of hostility, but simply on the principles of property.

I am, respectfully,
your most obedient servt.

JNO. L. SULLIVAN.

APPENDIX No. VI.

SIR :—Your favour addressed to Judge Spencer, I had the honour to receive from him, and have now to acknowledge the receipt of your letter of 27th August, 1822, directed to me as agent of the North River Steam Boat Company, which I shall lay before the board at their next meeting : but as it is not probable any meeting will be held within the period you named, I take the liberty to offer to you my remarks, as one of the proprietors of said company, that in case you receive no further notice, you may have the opinion of one of the company.

The frankness with which you have exposed your views of the importance of your inventions and purchases, your confidence in the same, together with your opinions respecting our rights, boats, accommodations and gratuitous law advice thereon, calls on me to be equally candid in my reply. You will excuse me therefore, when I contrast step by step your opinions with my own.

I believe that our three boats are *adequate* to the public accommodation, and as my situation affords me better means than you possess, of being well informed on all the points of your letter, touching the concerns of our company ; you will pardon the little deference I pay to your opinions, in so boldly obtruding my own. It is their knowledge of the adequacy of their boats that prevails with the company not to build more, and *not* “ the uncertain tenure or legal instability of (our) state grant.” It is begging the question to state positively that the law of Congress, of 1819, passed at your suggestions, renders “ *null and void* our state privilege as to patented engines.” This is not the opinion of able lawyers, nor does “ the opening made by Lansing and Thayer’s case,” which you cite, shake such opinion.

I have so frequently heard of threats of opposition from others besides yourself, of large capitals being ready to uphold it, of competition in a variety of shapes, and under various pretences of the unpopularity of the grant, of the state not having power to make such grant, and of the probability of a repeal of the same, that a repetition of them does not now shake my confidence in the stability of our rights. But when you state positively, that “ the bill reported by the committee at the last

session of our legislature, would have been passed, had the applicants been content with that alone," and it is a fact within my own personal knowledge, having been on the spot, with this business entrusted to me, that there was no such prospect. You must excuse me if I doubt the execution of threats, made on equally false premises.

Your plan of assuming the flag of the United States, I should think the East River Company would not adopt, as you will excuse them if they have more confidence in the opinion of the Chancellor of this state, than in yours. Its insufficiency to the ends you propose, you will find in his opinion in last Johnson, Gibbons vs. Ogden ; and if they cannot be protected under the flag of the United States, I do not think they would have much confidence in the "simplest" of your inventions, "gas fire or auxiliary flame."

I confess I have heard much from you of tow boats, but having been disappointed in the hope of seeing the models which you offered to present to the committee, (before whom you will recollect we appeared some years since) I should not as one, be willing to adopt them, having heard as much, of their total and entire failure and abandonment by the companies to the eastward, who had undertaken to test them. The company must, therefore, for the present be absolved from the charge of stifling improvements, if they lay your claims among the mass that have been proffered with equal confidence of their being important and advantageous inventions.

You will not be surprised under this candid view, that I should think that it would not be to the interest of this company to pay you \$150,000, one fourth cash, and the residue in their interchangeable notes, or by holding out false hopes, put any impediment in the way of your success in closing your bargain, with the capitalists who stand ready to foster your exertions and inventions. I do not think this company will take you under their wing, nor do I believe they will be much alarmed with the reiteration of your threats to destroy their property ; and in return for your kind advice, I would suggest that you lose no time in extending your acquaintance in the western counties as you propose doing. As you requested a decisive answer, so far as my opinion goes, I have endeavoured to make it precise and definite, and if in so doing I should have offended the pride of invention, you must attribute it to my candour. You may rest assured that the measures you may think proper to pursue, will be viewed but as the offspring of your "desire to protect your property and not of hostility," from which spirit I must also beg leave to assure you I am perfectly free.

respectfully, your obedient serv't,

D. LYNCH, Jr.

A. S. Clark.

28

3/30/74 APPENDIX No. VII.

Troy, 7th October, 1822.

D. LYNCH, Esq.

SIR:—Your letter of the 28th came duly to hand, a few weeks ago, on my return to this city.

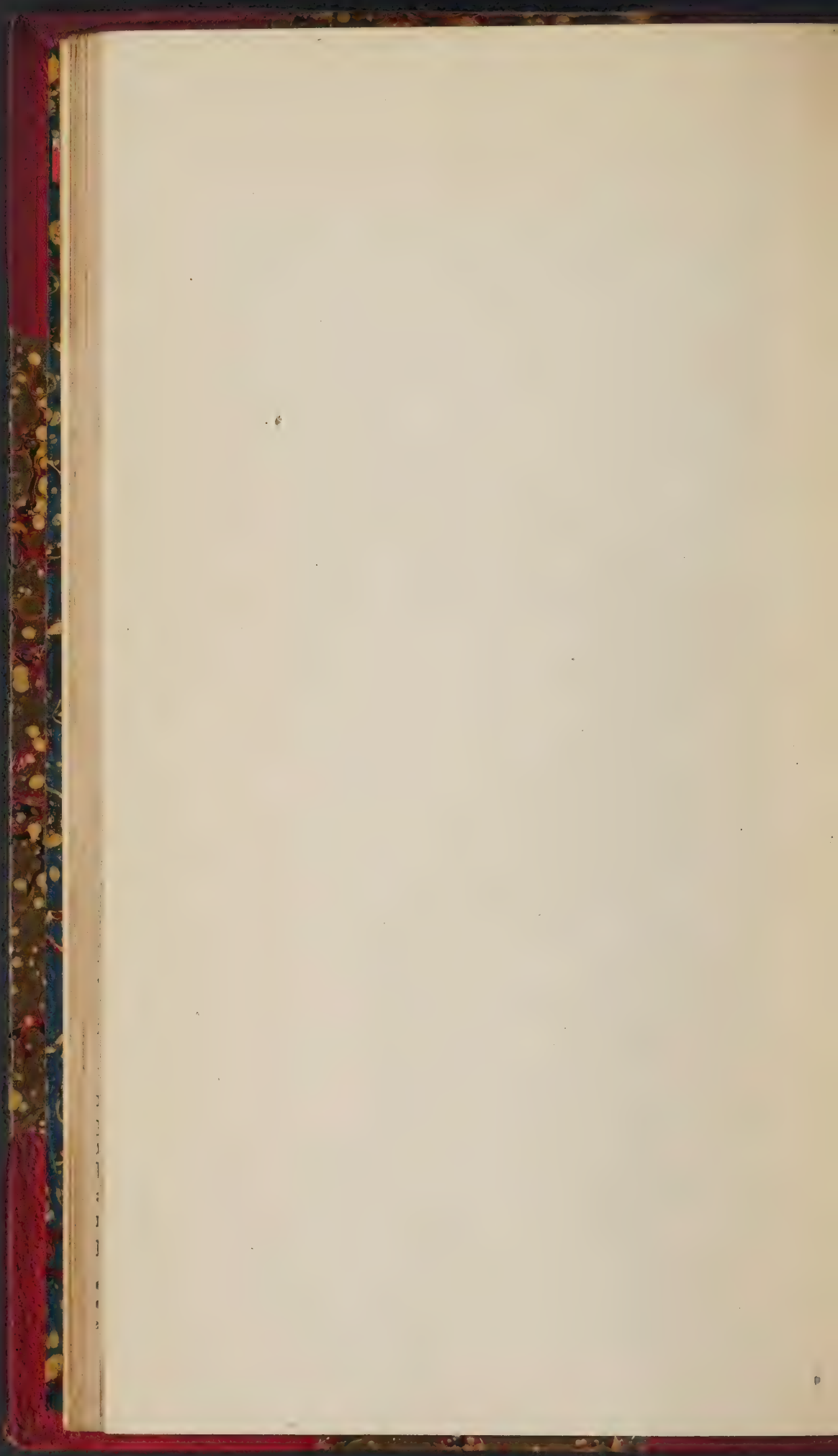
As a gratuitous and unexpected favour of your individual opinion for the incorporation, some acknowledgment is due, as it was kindly intended to leave me in no doubt of this. And it may be sufficient to say on the subject of steam boats, that there can be but *one* opinion among lawyers and men of sense; that is, that room must and will be found in the state, for a conformity to its laws, and to those of Congress.

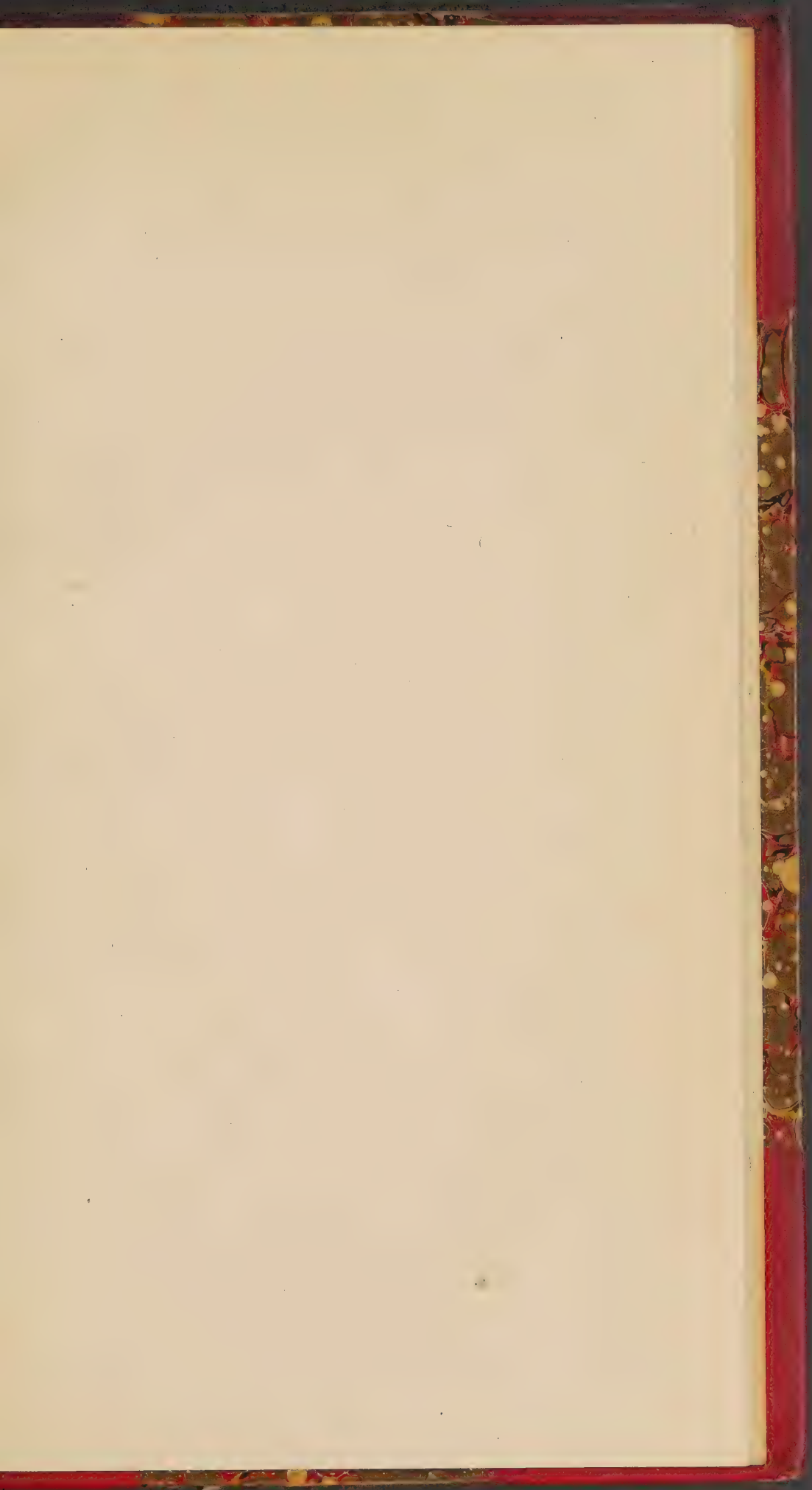
The subject only requires to be understood, and for that end, I have made as brief an exposition as possible, merely for the information of a few friends at a distance: and I transmit you herewith a copy, to convince you that no *illegal* interference with the state grant is contemplated. Indeed, I hope it will continue to enjoy just all it ever had any *real right* to possess.^(k) To conclude, I beg leave (en-passant) to rectify (although unimportant) a small error which you appear to be under, that the principles of the steam tow boat "is abandoned." You will find, on the contrary, that it will continue in operation on the great rivers of Georgia and South Carolina, the ensuing winter; and I doubt not you will see it prevail on the Hudson even as extensively and usefully as Mr. Fulton himself anticipated: nor will the *go* policy of your company obstruct it, (were it possible) while it proves a practical saving to the people whose feelings in regard to the monopoly, I am now more extensively acquainted with. I confess to you for a *feeble* competition with your very commodious boats, in the business of *passage*, may well be dispised. I am sure there will be no essential interference. On the great and broad waters, the state might boast, as the first in the world, for the display of the progress of the arts and sciences, comprehended in steam navigation.

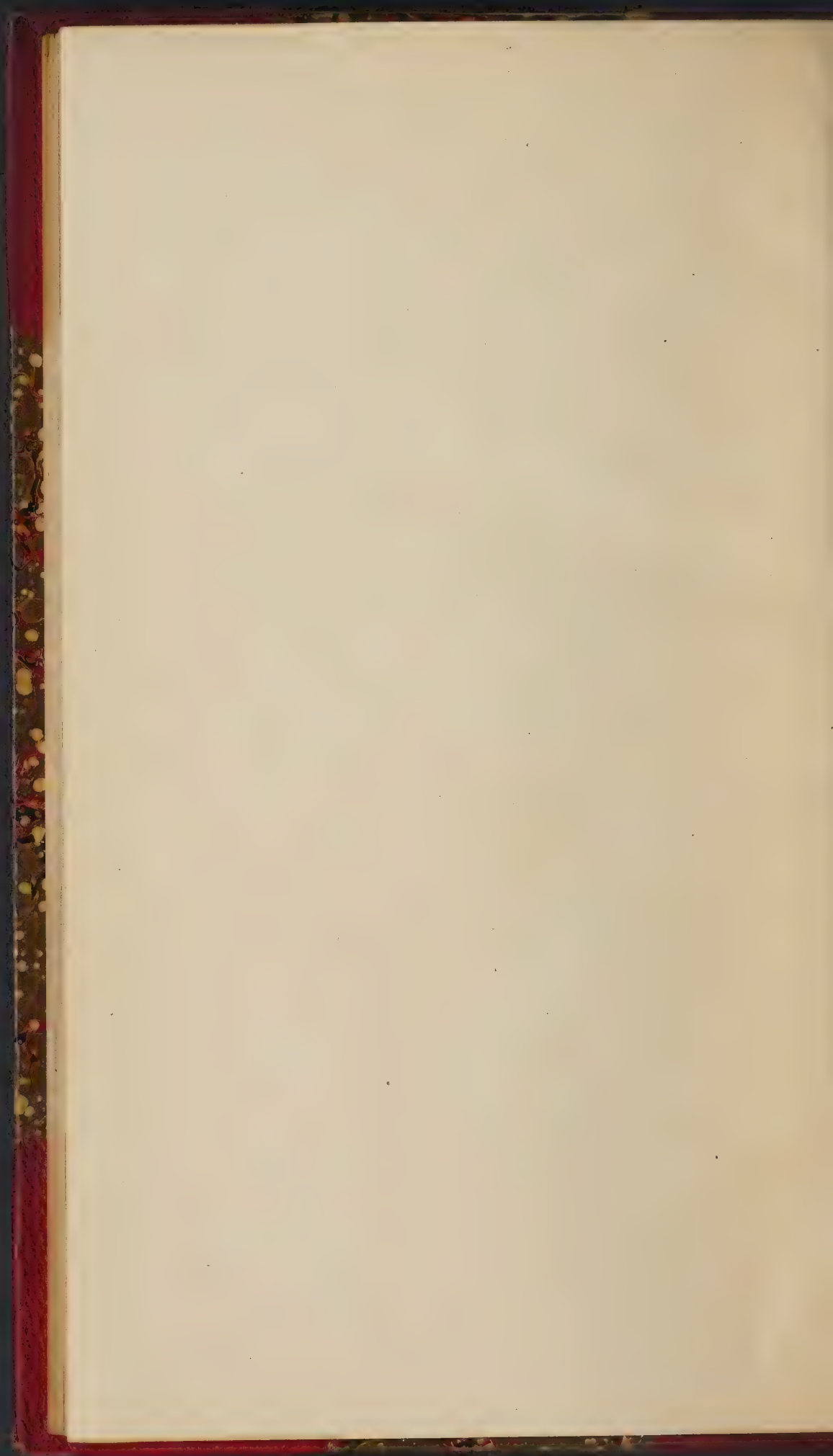
I remain, respectfully,
yours, &c.

JNO. L. SULLIVAN.

^(k) The reader is requested to turn to Mr. Sullivan's equally confident opinion on this subject, in 1815, expressed in his memorial to the Massachusetts Legislature.







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